

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

In the Matter of)	
)	
Chesapeake Bay Contractors)	NAL/Acct. No. 315NF0016
Virginia Beach, Virginia)	

MEMORANDUM OPINION AND ORDER

Adopted: March 21, 1997

Released: March 27, 1997

By the Commission:

1. Before the Commission is an Application for Review filed by Chesapeake Bay Contractors (Chesapeake). Chesapeake appeals an Order by the Compliance and Information Bureau (Bureau) denying reconsideration of a monetary forfeiture of \$6,400 imposed pursuant to Section 503(b) of the Communications Act of 1934, as amended, (the Act), 47 U.S.C. § 503(b), for failing to comply with tower lighting and painting requirements in violation of Sections 17.24 and 17.50 of the Commission's rules, 47 C.F.R. §§ 17.24, 17.50. Chesapeake Bay Contractors, 9 FCC Rcd 1647 (CIB 1994).

2. In the Application for Review, Chesapeake raised the following arguments. Chesapeake contended that the reference to lighting and painting requirements in its station license "was overlooked by this Company - not ignored," and that Chesapeake would have required its contractor to comply with the requirements if Chesapeake had been aware of the requirements when the tower was reinstalled prior to renewal of the license. It also contended that if it had known about the possibility of seeking an exemption, it would have done so. In addition, Chesapeake contended that trees nearby are just as tall and it "seems that an exemption for the trees surrounding the tower would have been just as appropriate." Chesapeake also claimed that it did not willfully violate the Act. In support of this claim, Chesapeake stated that the Bureau cannot "re-define" the word [willful] to suit a particular purpose." We have considered Chesapeake's Application for Review and conclude that all of the arguments raised therein were previously considered by the Bureau, thoroughly discussed, and properly decided. Therefore, we find no reason to disturb the Bureau's decision.

3. We note that, with respect to the monetary forfeiture amount, the Bureau followed the guidelines established in the Commission's Policy Statement, Standards for Assessing Forfeitures (Policy Statement), 8 FCC Rcd 6215 (1993). On July 24, 1994, the Court of Appeals for the D.C. Circuit vacated the forfeiture guidelines. United States Telephone Assn. v. FCC, 28 F.3d 1232 (D.C. Cir. 1994). Therefore, we have evaluated the forfeiture amount in the instant case in light of the statutory factors outlined in Section 503(b)(2)(D) of the Act. 47 U.S.C. §

503(b)(2)(D). In particular, Section 503(b) of the Act requires that the Commission "take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." *Id.* After evaluating the facts and circumstances in the case under the statutory guidelines, we conclude that a forfeiture in the amount of \$6,400 is warranted. The tower conditions at issue impaired the safety of air navigation. Chesapeake Bay Contractors, 9 FCC Rcd 1647 (CIB 1994). We consider air navigation safety to be of the utmost importance. Here the license issued in 1988 contained clear and unambiguous lighting and painting requirements for a tower located within one mile of the Oceana Naval Air Station, Virginia Beach, Virginia. The licensee did not comply with these requirements. We therefore find the forfeiture of \$6,400 assessed by the Bureau to be justified under the totality of the circumstances surrounding the violation.

4. Accordingly, **IT IS ORDERED**, that pursuant to 47 C.F.R. § 1.115(g), the Application for Review filed by Chesapeake Bay Contractors **IS DENIED**.

5. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b) and Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, Chesapeake Bay Contractors is liable for a monetary forfeiture in the amount of six thousand four hundred dollars (\$6,400) for violating Sections 17.24 and 17.50 of the Commission's rules, 47 C.F.R. §§ 17.24, 17.50. The amount specified was determined after consideration of the factors set forth in Section 503(b) of the Act.

6. **IT IS FURTHER ORDERED** that pursuant to Section 1.80(h) of the Commission's rules, 47 C.F.R. § 1.80(h), Chesapeake Bay Contractors, shall, within thirty (30) days of the release date of this Order, pay the full amount of the forfeiture. Payment may be made by check or money order payable to the Federal Communications Commission. Payment may also be made by credit card with the appropriate documentation.¹ The remittance should be marked NAL Acct. No. 315NF0016 and be mailed to the following address:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

Forfeiture penalties not paid within 30 days will be referred to the U. S. Attorney for recovery in a civil suit. 47 U.S.C. § 504(a).

¹Contact Chief, Billings and Collections at (202) 418-1995 for more information on payment by credit card. Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C., 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's Rules.

7. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent by certified mail, return receipt requested, to Chesapeake Bay Contractors.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

